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## 1.1 Summary of Benchbook Contents

This benchbook details the procedures used in both juvenile delinquency cases and cases in which a juvenile is tried and sentenced as an adult, either

in “juvenile court” or in “adult court.” Thus, it covers proceedings that occur in the Family Division of the Circuit Court and the Criminal Division of the Circuit Court.

**NOTE:** Throughout this benchbook, “Family Division” is used to describe the Family Division of the Circuit Court, and “Criminal Division” is used to refer to the division of the circuit court that normally handles felony offenses committed by adults. References to the probate court or “juvenile court” and recorder’s court used in statutes, court rules, or case law have been altered to conform to this usage. MCR 5.903(A)(8) states that “juvenile court” or “court” means the Family Division of the Circuit Court when used in Subchapter 5.900, and MCL 600.1009; MSA 27A.1009, states that a reference to the former Juvenile Division of the Probate Court in any statute shall be construed as a reference to the Family Division of Circuit Court.

\*Chapters 2–5, 8, and 25 contain material applicable to all of the 4 types of proceedings listed below.

\*See Chapters 6–15.

\*See Chapters 16–21.

\*See Chapters 22–23.

The organization\* of this Benchbook reflects four different types of proceedings involving juveniles charged with criminal or status offenses. The four types of proceedings are:

#### **F Delinquency Proceedings\***

Delinquency proceedings involve juveniles under age 17 charged with a violation of a criminal law or ordinance, or a status offense. Delinquency proceedings occur within the Family Division. If the juvenile is found responsible for the offense, the court may order a disposition.

#### **F Designated Proceedings\***

In designated proceedings, the juvenile is tried in criminal proceedings that occur within the Family Division. No waiver of Family Division jurisdiction is required prior to trying the juvenile as an adult. The juvenile is afforded all the legal and procedural protections that an adult would be given if charged with the same offense in a court of general criminal jurisdiction. A plea of guilty or nolo contendere, or a verdict of guilty, results in the entry of a judgment of conviction. Following conviction, the juvenile may be sentenced as an adult, or the court may impose a juvenile disposition.

#### **F “Automatic” Waiver Proceedings\***

Where a “specified juvenile violation” is alleged, “automatic” waiver allows the prosecuting attorney to vest jurisdiction in the Criminal Division by filing a complaint and warrant in district court rather than filing a petition in the Family Division. The juvenile is tried in criminal proceedings that occur within the Criminal Division. Following conviction, the juvenile may be sentenced as an adult or placed on probation and committed to state wardship.

**F “Traditional” Waiver Proceedings\***

Where a juvenile is charged with a felony, the prosecuting attorney may file a motion asking the Family Division to waive its jurisdiction to allow the juvenile to be tried as an adult in the Criminal Division. If the Family Division waives its delinquency jurisdiction over the juvenile, a criminal trial takes place in the Criminal Division. Following conviction, the juvenile must be sentenced as an adult.\*

\*See Chapter 24.

\*See Section 1.4 for a comparison of designated and waiver cases.

## 1.2 Table Summarizing Statutes and Court Rules Governing Proceedings Involving Juveniles

The following table provides general guidance in locating statutes and court rules governing various proceedings involving juveniles in the Family Division and the Criminal Division. Note that other statutes and court rules may be incorporated by reference in these provisions. See MCR 5.901(A) and 6.901(A).

**Table 1: Statutes and Court Rules**

Type of Proceeding	
<b>Delinquency Cases in Family Division, Including Status Offenses</b>	<p><b>Statutes:</b> MCL 712A.1 et seq.; MSA 27.3178(598.1) et seq. (Juvenile Code) MCL 722.821 et seq.; MSA 25.243(51) et seq. (Juvenile Diversion Act)</p> <p><b>Court Rules:</b> MCR 5.901–5.950, 5.980, and 5.991–5.993</p>
<b>Designated Proceedings in Family Division</b>	<p><b>Statutes:</b> Sections 2d, 9a, 18(1)(n), 18h, and 18i of the Juvenile Code, MCL 712A.1 et seq.; MSA 27.3178(598.1) et seq.</p> <p><b>Court Rules:</b> MCR 5.951–5.956</p>
<b>“Traditional” Waiver of Family Division Jurisdiction</b>	<p><b>Statutes:</b> MCL 712A.4; MSA 27.3178(598.4) (Juvenile Code)</p> <p><b>Court Rule:</b> MCR 5.950</p>
<b>“Automatic” Waiver of Family Division Jurisdiction</b>	<p><b>Statutes:</b> MCL 600.606; MSA 27A.606 (jurisdiction), MCL 764.1f; MSA 28.860(6) (arraignment in district court), MCL 769.1 et seq.; MSA 28.1072 et seq. (sentencing)</p> <p><b>Court Rules:</b> Subchapter 6.900, MCR 6.901 et seq.</p>

## 1.3 A Summary of Recent Juvenile Justice Legislation

In 1996, the Michigan Legislature passed a “juvenile justice reform package,” which extensively altered the manner in which juveniles who

\*See 1988 PA 67, amending MCL 764.1f; MSA 28.860(6) (provision for “automatic” waiver procedure).

committed criminal offenses would be dealt with in both the adult and juvenile justice systems. Impetus for the changes was rooted in the

“ . . . widespread public perception that there exists a growing population of juvenile offenders who are without remorse or compassion, and pose an increasing threat to average citizens. In the eyes of the public, it is readily apparent that the efforts to reform Michigan’s juvenile justice system in 1988-89\* have not significantly altered the behavior of juveniles. Many claim that the increases in violent juvenile crime stem from the perception that the criminal justice system is particularly lenient on juvenile offenders . . . .

“The alleged leniency of the current juvenile system stems, by most accounts, from its origins. The current system was designed to deal with youthful offenders who committed far less heinous crimes than the current generation of youthful criminals. The system’s intent was to rehabilitate wayward youth, and as a result does not offer the more severe and lengthy penalties provided in the adult system.” House Legislative Analysis, SB 281, 283, 682, 689, 698, 699, 700, 867, 870, and HB 4037, 4044, 4371, 4445, 4486, 4487, and 4490, May 8, 1996.

Other statutory amendments within recent years have also altered the nature of proceedings involving juveniles. The major changes to the law governing delinquency and criminal proceedings are summarized below.

**NOTE:** Because this portion of Chapter 1 is meant to be an introduction, it does not contain the citations to authority that are contained in the rest of the benchbook. Instead, all of the references in this portion are to sections of the benchbook where those citations may be found.

## A. Effective Dates of Statutory Amendments

Statutes creating the Family Division became effective January 1, 1998. 1996 PA 388. All provisions of the “juvenile justice reform package” became effective January 1, 1997, except for the following:

- F provisions establishing juvenile boot camps became effective August 1, 1996, 1996 PA 164, 243–263;
- F provisions establishing designated or criminal proceedings within the juvenile court became effective August 1, 1996, 1996 PA 164, 243–263;

- F amendments to the Juvenile Diversion Act, MCL 722.821 et seq.; MSA 25.243(51) et seq., became effective May 1, 1996, 1996 PA 137; and
- F amendments to restitution statutes affecting juvenile offenders became effective June 1, 1997, 1996 PA 560 and 561.

## **B. Creation of Family Division of Circuit Court\***

Beginning January 1, 1998, jurisdiction of delinquency cases and designated cases was transferred from the Juvenile Division of the Probate Court to the newly created Family Division of the Circuit Court.

\*See Chapter 2 for a detailed explanation of Family Division jurisdiction over cases involving juveniles.

## **C. Matters Involving Members of Same Family Must Be Assigned to Same Family Division Judge When Practicable**

Whenever practicable, two or more matters within the Family Division's jurisdiction pending in the same judicial circuit and involving members of the same family must be assigned to the judge who was assigned the first matter. The petition in a delinquency case must now identify other matters involving family members.\*

\*See Section 7.5 for these petition requirements.

## **D. Juveniles Charged With Felonies May Be Confined in the County Jail While Awaiting Trial\***

Juveniles charged with felonies may be confined in the county jail while awaiting trial. In delinquency cases and designated cases, the juvenile must be kept "out of sight and sound" of adult prisoners. In "automatic" waiver cases, the juvenile must be kept physically separate from adult prisoners. In "traditional" waiver cases, following the second phase of the waiver hearing, juveniles need not be kept separate and apart from adult prisoners.

\*See Section 3.13 for a table summarizing places of detention for juveniles.

## **E. Prosecutor May File Petition If Juvenile Does Not Comply With Juvenile Diversion Agreement\***

The Family Division judge or referee may use the Juvenile Diversion Act in certain delinquency and status offense cases. If the juvenile violates the diversion agreement, the court may revoke the agreement, and the prosecutor may file a petition against the juvenile for the original offense. Prior to 1996, the prosecutor did not have authority to file a petition following a juvenile's noncompliance with a juvenile diversion agreement.

\*See Section 6.3 for a detailed explanation of the Juvenile Diversion Act.

\*See Section 12.9 for a detailed explanation of this requirement.

\*See Section 12.8(M) for a detailed explanation of the requirements for placing the juvenile in a boot camp.

\*See Section 15.7(A) for a complete list of these offenses.

\*See Section 15.7 for a detailed explanation of required commitment review hearings.

\*See Section 16.4 for a list of specified juvenile violations.

## **F. Mandatory Detention for Juvenile's Use of Firearm During Criminal Offense\***

A juvenile who commits a criminal offense with a firearm and is not sentenced as an adult following designated proceedings must be committed to a detention facility for a specified period of time, but the commitment period cannot exceed the period an adult offender would have received for the same offense.

## **G. Juvenile Boot Camps Established\***

The Family Independence Agency is authorized to establish boot camps for juveniles. Juveniles may be placed in these boot camps for 90 to 180 days, followed by 120 to 180 days of intensive community supervision.

## **H. Three More Offenses Allow for Extension of Family Division Jurisdiction Until Age 21\***

The Family Division may now extend jurisdiction until age 21 for 3 additional serious offenses. The additional offenses are:

- F first-degree home invasion, MCL 750.110a(2); MSA 28.305a(2);
- F escape or attempted escape from a juvenile facility, MCL 750.186a; MSA 28.383a; and
- F bank, safe, or vault robbery, MCL 750.531; MSA 28.799.

## **I. Juveniles Have the Burden of Proving Rehabilitation at Required Commitment Review Hearings in Delinquency Cases\***

At the required review hearing prior to the juvenile's 19th birthday, the juvenile now has the burden of proving by a preponderance of the evidence that he or she has been rehabilitated and does not present a serious risk to public safety. Prior to 1996, the prosecuting attorney had the burden of proof.

## **J. Prosecutor-Designated Cases May Be Used for "Specified Juvenile Violations"**

One of the defining characteristics of the separate system of justice for juveniles has been that juvenile delinquency proceedings have been defined as non-criminal proceedings. The 1996 statutory amendments to the Juvenile Code added provisions that allow a juvenile to be tried as an adult *within the Family Division*. If a juvenile of any age under 17 is charged with a "specified juvenile violation," the prosecutor may designate the case for criminal trial within the Family Division.\*

## K. Court-Designated Cases May Be Used for Any Criminal Offense

If a juvenile of any age under 17 is charged with any other offense, including a misdemeanor, the prosecutor may petition the court to designate the case for criminal trial within the Family Division. The court must then determine whether the best interests of the public and the juvenile would be served by designating the case for criminal trial and must consider several factors, giving greater weight to the seriousness of the alleged offense and the juvenile's prior delinquency record.\*

\*See Section 16.21 for a list of the factors the court must consider in deciding whether to designate the case.

## L. Trials of Designated Cases Must Follow Procedures for Trials of Criminal Cases

A designated case is tried with all of the protections and procedures of a case in the Criminal Division involving an adult defendant, including a preliminary examination for felonies and a 12-person jury. A guilty plea or guilty verdict will result in a judgment of conviction.\*

\*See Section 16.1 for a list of court rules governing designated proceedings.

## M. Juveniles May Be Sentenced As Adults Following Convictions in Designated Cases

Upon conviction in a designated case, the court may impose a juvenile disposition or an adult sentence, or it may place the juvenile on probation and delay imposition of adult sentence. In making this determination, the court must consider the same factors as those used to decide whether to designate a case for criminal trial, again giving greater weight to the seriousness of the offense and the juvenile's prior record.\*

\*See Section 19.1 for a list of the court's sentencing options.

At the initial sentencing hearing, only juveniles convicted of specified juvenile violations may be sentenced to prison.\* The juvenile cannot be sentenced to county jail unless the jail meets all federal requirements for housing juveniles. The court must consult with the sheriff to assure that space is available for the juvenile. Juvenile probation services cannot be performed by department of corrections employees.

\*See Section 19.6 for a list of maximum penalties for specified juvenile violations.

If the court delays imposition of sentence and places the juvenile on probation, conviction or adjudication of a felony mandates that probation be revoked and the juvenile receive an adult sentence for his or her original offense. For any other probation violation, the court may revoke probation and impose an adult sentence or elect other dispositional options, including incarceration in a county jail for not more than 30 days.\*

\*See Sections 21.12 and 21.13 for a discussion of these requirements.

\*See Sections 21.1–21.11 for a discussion of review of delayed sentences.

\*See Section 16.4 for a definition of prosecutor-designated cases and Section 22.1 for “automatic” waiver requirements.

\*See Sections 22.1 (“automatic” waiver) and 24.1 (“traditional” waiver).

\*See Section 16.21.

\*See Section 19.2.

\*See Section 24.19.

\*See Section 23.6.

## **N. Review Hearings Must Be Held If Court Delays Juvenile’s Sentence in Designated Cases\***

The court must conduct annual reviews of all delayed sentences and review hearings when juveniles reach age 19 and at the end of a juvenile’s probationary period. At the juvenile’s final review hearing, the court must decide whether to impose the sentence upon the juvenile.

## **O. Prosecutor May Now Designate Case for Criminal Trial in Family Division or Pursue “Automatic” Waiver Where “Specified Juvenile Violations” Are Alleged\***

The prosecutor may elect to charge juveniles with “specified juvenile violations” in either the Criminal Division pursuant to “automatic” waiver procedures or in the Family Division pursuant to the new designated case procedures. The list of “specified juvenile violations” has been expanded beyond the “life offenses” for which “automatic” waiver was previously available.

## **P. Juveniles Age 14 Now Subject to “Automatic” and “Traditional” Waiver Proceedings**

The age at which jurisdiction over juveniles may be waived to adult court using “traditional” or “automatic” waiver was lowered from 15 to 14 years. In addition, upon a finding of probable cause that a felony was committed and that the juvenile committed it, the juvenile must be waived if he or she was previously in circuit or recorder’s court via either “traditional” or “automatic waiver.”\*

## **Q. Same Criteria Must Be Used to Decide Whether to Designate Cases for Criminal Trial, Waive Jurisdiction, or Sentence the Juvenile As an Adult**

The same criteria must now be used to decide whether:

- F** to designate a case for criminal trial in the Family Division;\*
- F** to sentence a juvenile as an adult following conviction in designated proceedings;\*
- F** to waive jurisdiction following “traditional” waiver proceedings; and\*
- F** to sentence a juvenile as an adult or place the juvenile on probation and commit the juvenile to state wardship following “automatic” waiver proceedings.\*

The court must now give greater weight to the seriousness of the offense and the juvenile’s prior record of delinquency than the other enumerated factors. Prior to 1996, the statutory factors placed greater emphasis on

the juvenile's rehabilitative potential, and no single factor was to be given undue weight. The new factors include:

- F the seriousness of the alleged offense;
- F the culpability of the juvenile in committing the alleged offense;
- F the juvenile's prior record of delinquency;
- F the juvenile's programming history;
- F the adequacy of the punishment or programming available in the juvenile justice system; and
- F the dispositional options available for the juvenile.

## **R. Certain Offenses Now Require an Adult Sentence Following Conviction in "Automatic" Waiver Cases**

Prior to the 1996 statutory amendments, if a juvenile was convicted of a "life offense," the circuit or recorder's court would conduct a "juvenile sentencing hearing" to determine whether to sentence the juvenile as an adult or place the juvenile on probation and commit the juvenile to the Family Independence Agency. Now, if the juvenile is convicted of one of 12 very serious offenses, the juvenile must be sentenced as an adult.\*

\*See Section 23.2 for a list of these offenses.

However, if the juvenile is convicted of a specified juvenile violation other than one of the 12 listed offenses, the court must conduct a "juvenile sentencing hearing" to determine if the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to a state institution or agency or by imposing any other sentence provided by law for an adult offender.\*

\*See Section 23.3 for a list of specified juvenile violations not requiring adult sentences in "automatic" waiver cases.

## **S. Adult Sentencing Is Allowed at Final Commitment Review Hearings in "Automatic" Waiver Cases**

If the juvenile was placed on probation and made a state ward following conviction in an "automatic" waiver case, the Criminal Division must conduct a final review of the juvenile's probation and commitment not less than 3 months before the end of the juvenile's probationary period. If the court determines at this review that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court may impose the sentence.\*

\*See Section 23.19 for a discussion of final review hearings in "automatic" waiver cases.

## **T. Sentencing Alternatives Must Be Considered for Major Controlled Substance Offenses in Waiver and Designated Cases\***

If a juvenile is convicted following waiver or designated proceedings of manufacture, sale, delivery, or possession of more than 650 grams of a Schedule 1 or 2 narcotic or cocaine, the court must determine whether the best interests of the public would be served by:

\*See Sections 19.9 (designated cases), 23.4 ("automatic" waiver cases), and 24.26 ("traditional" waiver cases).

- F imposing the sentence provided by law for an adult offender (mandatory life imprisonment);
- F placing the individual on probation and committing the individual to a state institution or agency; or
- F imposing a sentence of imprisonment for any term of years but not less than 25 years, if the court determines by clear and convincing evidence that such a sentence would serve the best interests of the public.

\*See Section 1.3(Q), above.

In making this determination, the court shall use the same criteria used to decide whether to designate the case for criminal trial, to impose an adult sentence or juvenile disposition following conviction in designated cases, to waive jurisdiction following “traditional” waiver proceedings, and to sentence the juvenile as an adult following “automatic” waiver proceedings.\*

\*See Section 19.9(B) for definitions of felony and assaultive crime.

If convicted of a lesser major controlled substance offense, the court may depart from any mandatory minimum term, provided that the juvenile has not been convicted of another felony or assaultive crime in the same or a separate transaction.\*

## 1.4 A Comparison of Designated Cases and Waiver Cases

With the passage of the 1996 juvenile justice legislation, there are now five options available to prosecuting attorneys when a juvenile commits a serious criminal offense. The first option is that the prosecutor may file a delinquency petition against the juvenile in the Family Division. If the juvenile is found responsible for the offense following a plea or trial, he or she may be required to remain under the jurisdiction of the Family Division until age 21.

Because delinquency proceedings are not criminal proceedings, the juvenile who is found responsible for an offense in a delinquency case may not be sentenced as an adult. Consequently, the Legislature has made available to prosecuting attorneys four different types of proceedings that can lead to a criminal conviction for a juvenile. These are prosecutor-designated proceedings, court-designated proceedings, “automatic” waiver proceedings, and “traditional” waiver proceedings.

Although all of these proceedings can lead to a criminal conviction, each has distinguishing characteristics. The discussion that follows points out some of these characteristics.

### A. Judicial Discretion That Must Be Exercised

\*See Section 1.3(Q), above.

Each type of proceeding requires a circuit court judge to decide whether the juvenile should be tried or sentenced as an adult. The criteria that judges must use in making these decisions are identical in all four types of cases.\* However, the proceedings differ in the time that the decisions must be made and the interests that the judge must consider when making them.

- F In prosecutor-designated cases, no hearing is held prior to trial to determine whether to try the juvenile in criminal proceedings. The judicial decision to sentence the juvenile as an adult or to impose a juvenile disposition is not made until after conviction. The Family Division judge must impose a juvenile disposition unless the judge determines that it is in the best interest of the public to sentence the juvenile as an adult.
- F In court-designated cases, a hearing must be held to determine whether to try the juvenile in criminal proceedings. In making that decision, the Family Division judge must consider the best interests of both the juvenile and the public. Following conviction, the Family Division judge must impose a juvenile disposition unless the judge determines that it is in the best interests of the public to sentence the juvenile as an adult.
- F In “automatic” waiver cases, no hearing is held prior to trial to determine whether to try the juvenile in criminal proceedings. For certain serious offenses, the juvenile must be sentenced as an adult following conviction. For other offenses, the decision to sentence the juvenile as an adult or place the juvenile on probation and commit the juvenile as a state ward is made by a Criminal Division judge. The judge must consider only the best interest of the public in making that decision.
- F In “traditional” waiver cases, a two-phase hearing is held in the Family Division to determine whether the juvenile will be tried and sentenced as an adult in the Criminal Division. The Family Division judge must consider the best interests of both the juvenile and the public during the second phase of the waiver hearing.

## **B. Types of Offenses That May Be Charged**

Prosecutor-designated cases and “automatic” waiver cases may only be used when a specified juvenile violation is alleged.

Court-designated cases may be used for any type of offense (felony or misdemeanor), and “traditional” waiver cases may be used when a felony is alleged.

## **C. Division of Circuit Court That Has Jurisdiction**

The Family Division of the Circuit Court has jurisdiction over both types of designated cases and “traditional” waiver cases prior to the decision to waive jurisdiction. The Criminal Division of the Circuit Court has jurisdiction over “automatic” waiver cases, and it has jurisdiction over “traditional” waiver cases after jurisdiction has been waived by the Family Division.

## D. Types of Sentences That May Be Imposed

\*See Section 19.1, Note, for a discussion of whether juveniles can be committed to the Department of Corrections during the review period of delayed sentences in court-designated cases.

- F In prosecutor-designated cases, the Family Division judge may order a juvenile disposition, sentence the juvenile as an adult, or delay imposition of the sentence and place the juvenile on probation. If the juvenile is sentenced as an adult, he or she may be committed to the Department of Corrections. If the judge delays imposition of sentence, the court must review the sentence until the end of the juvenile's probationary period to determine whether sentence should be imposed at any point during that period.
- F In court-designated cases, the Family Division judge has the same options as in prosecutor-designated cases, except that, initially, the juvenile may not be committed to the Department of Corrections.\*
- F In "automatic" waiver cases, the Criminal Division judge must sentence the juvenile as an adult following conviction of one of 12 very serious offenses. For offenses not requiring adult sentencing, the judge may place the juvenile on probation and commit the juvenile to state wardship or impose an adult sentence. If the juvenile is placed on probation as a state ward, the court must review the sentence until the end of the juvenile's probationary period to determine whether sentence should be imposed at any point during that period.
- F In "traditional" waiver cases, the juvenile must be sentenced as an adult following conviction.



